

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

FRANK OROSCO CORDOVA, JR.,

Defendant and Appellant.

F056567

(Super. Ct. Nos. 07CM7527 & 08CM2266)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Kings County. Thomas DeSantos, Judge.

Mark Shenfield, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Michael P. Farrell, Senior Assistant Attorney General, Attorney General, Carlos A. Martinez and Stephen G. Herndon, Deputy Attorneys General, for Plaintiff and Respondent.

-ooOoo-

---

\*Before Cornell, Acting P.J., Dawson, J., and Kane, J.

## STATEMENT OF THE CASE

On October 30, 2007, appellant, Frank Orosco Cordova, Jr., entered into a plea agreement, waived his constitutional rights, and pled guilty to one count of transportation of methamphetamine (Health & Saf. Code, § 11379, subd. (a)) in case No. 07CM7527. Appellant also admitted two prior drug conviction enhancements (Health & Saf. Code, § 11370.2, subd. (c)).<sup>1</sup> On December 4, 2007, the court suspended imposition of sentence and placed appellant on probation.

On March 7, 2008, appellant's probation was summarily revoked. Appellant was arrested on a bench warrant and he denied allegations that he violated the terms of his probation. On August 5, 2008, a first amended complaint was filed in case No. 08CM2266 alleging appellant possessed methamphetamine (Health & Saf. Code, § 11377, subd. (a), count one), was under the influence of a controlled substance (Health & Saf. Code, § 11550, subd. (a), count three), and had endangered a child (Pen. Code, § 273a, subd. (b), count four).<sup>2</sup> The information alleged seven prior prison term enhancements (§ 667.5, subd. (b)).<sup>3</sup>

On September 15, 2008, appellant entered into a plea agreement, waived his constitutional rights, and pled guilty to one count of possession of methamphetamine. Appellant also admitted two prior prison term enhancements and that he violated the terms of his probation. The remaining allegations were dismissed.

---

<sup>1</sup> In exchange for appellant's plea, one felony count, two misdemeanor counts, seven prior prison term enhancements, and one prior drug conviction enhancement were dismissed.

<sup>2</sup> Unless otherwise noted, all statutory references are to the Penal Code.

<sup>3</sup> Hereinafter, we refer to section 667.5, subdivision (b) as section 667.5(b).

The probation officer recommended appellant be sentenced to the midterm of three years for his 2007 transportation of methamphetamine conviction plus consecutive three-year sentences for each of his prior drug conviction enhancements. The probation officer recommended appellant receive a consecutive sentence of eight months for the 2008 possession of methamphetamine conviction plus consecutive one-year sentences of one year for each prior prison term enhancement. The probation officer recommended a total prison sentence of 11 years 8 months.

At the sentencing hearing on October 2, 2008, the trial court noted it had read the probation officer's report. The court found appellant had admitted wrongdoing at an early stage of the proceedings in both cases and was not eligible for Proposition 36. The court found as an aggravating factor that appellant's record was abysmal. The court found the aggravated term of four years was appropriate for the transportation of methamphetamine conviction. Adding the two prior drug conviction enhancements, the court found the appropriate sentence for appellant was ten years and that the court would make any sentence on appellant's 2008 conviction concurrent with the sentence on the 2007 conviction.

The prosecutor noted that looking at section 667.5(b), it did not appear the court could give appellant a concurrent sentence for the prior prison term enhancements. The prosecutor argued the sentence on the 2008 conviction should run consecutive to appellant's 2007 conviction and the prior prison term enhancements had to be run consecutively. Defense counsel argued the 2008 conviction could run concurrently, but he was unsure whether the prior prison term enhancements could run concurrently. The prosecutor responded that it was logical for the eight-month sentence for the 2008 conviction to be made consecutive to the rest of appellant's sentence.

The trial court stated it would change its tentative ruling "to comply with the law in this case." The court sentenced appellant to prison for three years for transportation of

methamphetamine plus two consecutive sentences of three years for each prior drug conviction enhancement. The court sentenced appellant to prison for a consecutive term of eight months for the 2008 possession of methamphetamine conviction plus consecutive sentences of one year for each prior prison term enhancement. Appellant's total prison term was set at 11 years 8 months.

Appellant contends the trial court had the discretion to impose concurrent sentences for both the 2008 conviction and the two prior prison term enhancements. Because the trial court misunderstood its sentencing discretion, appellant argues the case must be remanded for resentencing. Respondent concedes the trial court erred.

### **DISCUSSION**

Appellant argues the trial court had discretion to sentence him concurrently for his 2008 conviction for possession of methamphetamine. Appellant further argues, and respondent concedes, that the trial court had the discretion to sentence him concurrently for the two prior prison term enhancements he admitted along with his guilty plea to the 2008 conviction.

As we explain, the parties are incorrect concerning the trial court's discretion to impose concurrent sentences on prior prison term enhancements. We agree with appellant's alternative argument, however, that the trial court has discretion to strike one or both of the prior prison term enhancements upon a proper statement of reasons.

We concur with the parties that the trial court had the discretion under section 669 to impose a concurrent sentence for appellant's 2008 conviction. (*In re Roberts* (1953) 40 Cal.2d 745, 749.) Where a defendant is convicted of two or more crimes, the trial court must impose either concurrent or consecutive sentences. (*People v. Felix* (2000) 22 Cal.4th 651, 655.) The trial court had the authority here to sentence appellant concurrently on the 2008 conviction.

The parties further agree that if the trial court sentences a defendant concurrently on a conviction, it must make any sentences based on enhancements to such a conviction concurrent as well. We agree that as long as an enhancement is related to the offense itself, the court should sentence a defendant on such an enhancement concurrently.

Section 667.5(b), however, relates to the defendant's status as a recidivist offender. (*People v. Williams* (2004) 34 Cal.4th 317, 404; *People v. Coronado* (1995) 12 Cal.4th 145, 157; *People v. Anderson* (1995) 35 Cal.App.4th 587, 599.) Irrespective of whether a defendant's sentences on multiple convictions are imposed consecutively or concurrently, section 667.5(b) enhancements do not attach to particular counts. (*People v. Smith* (1992) 10 Cal.App.4th 178, 182.) Where the defendant is being sentenced pursuant to the determinate sentencing law, prior prison term enhancements can only be imposed once for each enhancement. (*Id.* at pp. 182-183.)

Section 667.5(b) provides in relevant part: "where the new offense is any felony for which a prison sentence is imposed, in addition and consecutive to any other prison terms therefor, the court shall impose a one-year term for each prior separate prison term served for any felony ...." It is error for a trial court to impose a concurrent one-year sentence for a prior prison term enhancement. (*People v. Savedra* (1993) 15 Cal.App.4th 738, 747.) "Once the prior prison term is found true within the meaning of section 667.5(b), the trial court may not stay the one-year enhancement, which is mandatory unless stricken." (*People v. Langston* (2004) 33 Cal.4th 1237, 1241; also see *People v. Jones* (1992) 8 Cal.App.4th 756, 758.)

Appellant's prior prison term enhancements are status offenses that do not attach to particular counts. Thus, we do not accept the parties' proposition that the court must make appellant's sentence on the prior prison term enhancements concurrent if it imposes

a concurrent sentence for the 2008 conviction.<sup>4</sup> If the trial court decides to exercise its sentencing discretion, however, to impose a sentence less than 11 years 8 months, it may still strike one or both prior prison term enhancements pursuant to section 1385. Should the court elect to do so, its reasons must be set forth in the clerk's minutes of the proceedings. (*People v. Bonnetta* (2009) 46 Cal.4th 143, 148-152.)

Accordingly, we will remand so that the trial court may exercise its sentencing discretion.<sup>5</sup> In light of our ruling, we do not reach appellant's alternative argument that trial counsel was ineffective at the sentencing hearing.

### **DISPOSITION**

The trial court's sentence is vacated and the case remanded for the trial court to exercise its sentencing discretion in accordance with the views expressed herein. The judgment is otherwise affirmed.

---

<sup>4</sup> The parties' argument relies, in part, on *People v. Tassell* (1984) 36 Cal.3d 77, 89-92 (overruled on other grounds in *People v. Ewoldt* (1994) 7 Cal.4th 380, 401)(*Tassell*). *Tassell*, however, stands for the basic proposition that enhancements for prior convictions are to be added just once as a component of the aggregate term. (*Tassell, supra*, 36 Cal.3d at p. 91.)

<sup>5</sup> Appellant filed a supplemental brief arguing that because the trial court announced its tentative sentence of ten years, remand for resentencing is not necessary. The trial court, however, appeared to be unaware of the scope of its sentencing discretion. The interests of justice would be best served here by remanding to the trial court so that it can exercise its sentencing discretion. (§ 1260.)